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 6 **UNITED STATES BANKRUPTCY COURT**
 7 **DISTRICT OF NEVADA**

8 In re:

9 **USA COMMERCIAL MORTGAGE**
 10 **COMPANY,**

11 Debtor.

12 Case No. BK-S-06-10725-LBR

13 CHAPTER 11

14 **THIRTEENTH OMNIBUS
 15 OBJECTION OF USACM
 16 LIQUIDATING TRUST TO
 17 DUPLICATE PROOFS OF CLAIM;
 18 AND CERTIFICATE OF SERVICE**

19 Date of Hearing: October 18, 2011

20 Time of Hearing: 1:30 p.m.

21 The USACM Liquidating Trust (the “USACM Trust”) recently discovered that
 22 approximately 140 proofs of claim (“POC’s”) had not been entered in the database of
 23 Sierra Consulting and, therefore, had not been included in the loan by loan objections filed
 24 by the USACM Trust. Of those POC’s, 47 were duplicates of other POC’s that were
 25 already processed by the USACM Trust and the USACM Trust objects to these POC’s
 26 accordingly.

27 Pursuant to § 502 of title 11 of the United States Bankruptcy Code (the
 28 “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the
 29 “Bankruptcy Rules”), the USACM Trust requests an order disallowing the duplicate
 30 Proofs of Claim against USA Commercial Mortgage Company (“USACM”) to the extent
 31 such claims are duplicates of another claim that was filed by the same claimant. This
 32 Objection is supported by the Court’s record and the Declaration of Edward M. Burr in



1 Support of Omnibus Objections to Duplicate Proofs of Claim (the “Burr Decl.”) filed with
2 the Court today.

3 **I. JURISDICTION**

4 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
5 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
6 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007. The statutory predicate
7 for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

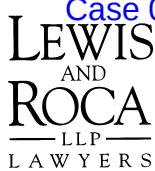
8 **II. BACKGROUND**

9 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA
10 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital
11 Diversified Trust Deed Fund, LLC (“DTDF”), and USA Capital First Trust Deed Fund,
12 LLC (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed
13 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued
14 to operate their businesses, if any, as debtors-in-possession pursuant to sections 1107(a)
15 and 1108 of the Bankruptcy Code. Debtors’ post-petition management of the Debtors was
16 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
17 (“Mesirow”), who served as the Chief Restructuring Officer.

18 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
19 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.
20 2376] (the “Confirmation Order”). Under the Plan, the USACM Trust is the successor to
21 USACM with respect to standing to seek allowance and disallowance of Claims. The
22 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.
23 Geoffrey L. Berman is the Trustee.

24 **III. APPLICABLE AUTHORITY**

25 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
26 will be allowed unless a party in interest objects. If a party in interest objects to the proof



1 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
2 shall allow the Claim except to the extent that the Claim is “unenforceable against the
3 debtor . . . under any . . . applicable law for a reason other than because such claim is
4 contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is
5 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof
6 of claim controverts the presumption, the creditor ultimately bears the burden of
7 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*
8 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (B.A.P. 9th Cir.
9 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996). The ultimate burden of proof as to the validity
10 of a proof of claim “remains at all times upon the claimant.” *Lundell v. Anchor Constr.*
11 *Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039 (9th Cir. 2000).

12 **IV. OBJECTION TO CLAIMS LISTED IN EXHIBIT A**

13 **Exhibit A**, attached, lists Proofs of Claim that appear to be duplicates of other
14 proofs of claim that were filed by the same creditors in the USACM bankruptcy estate.
15 **Exhibit A** identifies the claimant, the claimant’s address, the claim number that the
16 USACM Trust seeks to disallow as a duplicate claim, the amount of the duplicate claim,
17 the basis for the objection, the claim number that the USACM Trust counted as a valid
18 claim and processed accordingly (“processed claims”). The USACM Trust objects to each
19 of these claims to the extent it is a duplicate of a processed claim and requests that the
20 Court disallow the duplicate claims in full. The USACM Trust has already made any
21 objections that it intends to make to the processed claims. The disposition of the
22 processed claims will not be affected by the Court’s ruling on this objection. As required
23 by Nevada LR 3007, a copy of the first page of the proof of claim for each of the claims
24 referenced in **Exhibit A** are attached as **Exhibit B**.

25

26



1 **V. CONCLUSION**

2 The USACM Trust respectfully requests that the Court disallow the duplicate
3 claims listed in **Exhibit A** in their entirety. The USACM Trust also requests such other
4 and further relief as is just and proper.

5 Dated: September 15, 2011

6 LEWIS AND ROCA LLP

7 By /s/ John Hinderaker (#18024)

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15 *Attorneys for the USACM Liquidating Trust*

16 Copy of the foregoing and the pertinent
17 Portion of Exhibit A mailed by first class
18 Postage prepaid U.S. mailed on
19 September 15, 2011 to:

20 All parties in interest listed on
21 Exhibit A attached

22 LEWIS AND ROCA LLP

23 _____
24 /s/ Matt Burns

25 Matt Burns, Paralegal